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1 James Alan Bush  
2 1211 East Santa Clara Avenue #4  
3 San Jose, CA 95116  
4 (408) 982-3272

5 Plaintiff in pro per

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7  
8 RICHARD W. WIEKING  
9 CLERK  
10 U.S. DISTRICT COURT  
11 NO. DIST. OF CA. S.J.

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN JOSE DIVISION

15   
16 James Alan Bush,

17 ) Case No.: C 08-01354 (RS) JF

18 Petitioner, ) PETITION FOR WRIT OF MANDATE TO  
19 ) COMPEL THE FEDERAL BUREAU OF  
20 ) INVESTIGATION TO PERFORM THEIR  
21 ) DUTY

22 v. )  
23 Federal Bureau of Investigation, )  
24 and AGENT DOES ONE to TEN, ) [Title 28 U.S.C.S. § 1361]  
25 inclusive, )

26 Respondents. ) Judge Jeremy Fogel

27 PETITION FOR WRIT OF MANDATE

28 Comes now the Petitioner, James Alan Bush, on information, belief  
29 and established facts, by and through his own counsel of record,  
30 appearing in *pro se*, and for his petition for write of mandate against  
31 Respondent, Federal Bureau of Investigation, and agents acting on their  
32 behalf, states the following:

**PRELIMINARY STATEMENT**

Petitioner is seeking mandamus relief against, Respondent, Federal Bureau of Investigation, who refused to fulfill their statutory responsibilities, pursuant to Title 28 U.S.C.A. § 535, and failed to take actions within the legal limits of their authority, pursuant to Title 42 U.S.C.S. § 12101 and Title 42 U.S.C.S. § 14141; specifically, the aforementioned respondents refused to forward to the Civil Rights Division of the Department of Justice, petitioner's allegations of deprivation of certain rights and protections guaranteed to him by the Fourteenth Amendment to the United States Constitution, and violations of Title II of the Americans with Disabilities Act (ADA) of 1990, and Title 18 U.S.C.A. § 242, by officials acting under color of law, including judges and clerks in the Superior Court of California, Santa Clara County, San Jose (in the Civil Division and Family Court); and, police officers and employees of the Sunnyvale Department of Public Safety, Santa Clara Police Department, City of Campbell Police Department, San Jose Police Department, and Santa Clara County Office of the Sheriff.

**RELEVANT STATUTORY SCHEME**

Title 28 U.S.C.A. § 535 mandates and governs the investigation of crimes involving government officers and employees. It authorizes the Attorney General and the Federal Bureau of Investigation to investigate any information, allegation, matter, or complaint witnessed, discovered, or received, relating to violations of federal criminal law involving government officers and employees; and, requires the head of the FBI, or the witness, discoverer, or recipient, to expeditiously report these

1 violations to the Attorney General, as appropriate.

3 **JURISDICTION**

4 Title 28 U.S.C.S. § 1361 confers original jurisdiction on the  
5 district courts of any action in the nature of mandamus to compel an  
6 officer or employee of the United States or any agency thereof to perform  
7 a duty owed to petitioner.

9 **VENUE**

10 Title 28 U.S.C.S. § 1391(e) provides for venue for actions in the  
11 nature of mandamus brought under Title 28 U.S.C.S. § 1361 against  
12 federal officers, employees, or agencies, or any agency thereof acting in  
13 its official capacity or under color of legal authority.

15 **PARTIES**

16 1. Petitioner, James Alan Bush, is the plaintiff in an action filed  
17 on March 10<sup>th</sup>, 2008, in this Court, which sets the foundation to  
18 support the claims set forth herein, and provides the factual  
19 basis for the violations the petitioner attempted to report to the  
20 respondents.

21 2. Respondent, Federal Bureau of Investigation (herein referred to  
22 as "FBI"), is an agency of the United States and a component of  
23 Department of Justice.

24 3. Respondents, AGENT DOES ONE through TEN, are officers, agents and/or  
25 employees of the FBI, acting within the scope of their office or  
26 employment, and are being sued individually and each in their

1 official capacity, for the negligent and/or wrongful acts and/or  
2 omissions occurring in connection with the performance of their  
3 duties.

4

5 **FACTUAL SUMMARY**

6 4. As agents acting on behalf of the Federal Bureau of Investigation,  
7 Respondents, AGENT DOES ONE through TEN, have, and at all relevant  
8 times described herein had, a clear and present legal duty (i.e.,  
9 nondiscretionary ministerial and statutory requirement) under  
10 Title 28 U.S.C.S. § 1361 to report any information, allegation, and  
11 complaint relating to violations of federal criminal law and civil  
12 rights, by officials acting under color of law, to the Civil Rights  
13 Division of the Department of Justice.

14 5. Respondents, AGENT DOES ONE through TEN, have, and at all relevant  
15 times described herein had, the present ability to perform the  
16 above-described duty.

17 6. Respondent, Federal Bureau of Investigation, is, and at all  
18 relevant times described herein was, the appropriate venue for the  
19 petitioner to bring his complaint for violations of federal criminal  
20 law and of his civil rights, by officials acting under color of law,  
21 in that:

- 22 • Title 42 U.S.C.S. § 12101 grants authority to the Civil Rights  
23 Division of the Department of Justice to enforce the Fourteenth  
24 Amendment to the United States Constitution, and investigate  
25 allegations of discrimination based on disabilities under  
26 Title II of the Americans with Disabilities Act (ADA) of 1990;

1 and,

- 2 • Title 42 U.S.C.S. § 14141 allows the United States to remedy a  
3 pattern or practice of conduct by any governmental authority,  
4 or any agent thereof, or any person acting on behalf of a  
5 governmental authority, including law enforcement officers, who  
6 deprive a person of their constitutionally guaranteed rights.

7 7. On or about June 1<sup>st</sup>, 2006, and on multiple occasions thereafter,  
8 Petitioner made demands on Respondent, Federal Bureau of  
9 Investigation, to perform its duty, *in persona*, to Respondents,  
10 AGENT DOES ONE through TEN, both in San Francisco (450 Golden  
11 Gate Avenue, 13<sup>th</sup> Floor) and in Campbell (1919 South Bascom Avenue,  
12 4<sup>th</sup> Floor); and, in writing, to the Civil Rights Division of the  
13 Department of Justice, on January 10<sup>th</sup>, 2007.

14 A copy of the written reply by the Department of Justice: Special  
15 Litigation Division is attached hereto as Exhibit "A", and made a  
16 part hereof.

- 17 8. In all cases, the aforementioned respondents failed to document  
18 petitioner's complaint, without proffering a tenable explanation.  
19 9. Given the refusal of Respondent, Federal Bureau of Investigation, to  
20 properly and effectively investigate the complaints and allegations  
21 of the petitioner and bring the perpetrators to justice, in  
22 accordance with the law and its own policies, and given further  
23 other substantial indicators of acquiescence by the Department of  
24 Justice in the abuses described in petitioner's complaint, and its  
25 unwillingness to support legal initiatives that might be undertaken  
26 to obtain relief for the petitioner, further efforts to secure

remedies through these venues would be futile.

10. Consequently, Petitioner has no plain, speedy, and adequate remedy in the ordinary course of the law other than to request the Court to compel official action by mandatory order.

11. Petitioner asserts that a writ of mandate is appropriate because

(1) he has sufficiently established his clear and indisputable right to the relief sought, (2) the respondents have a statutory mandate to fulfill that right, and (3) the petitioner has no other adequate remedy available to him.

### PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that the Court grant summary judgment in his favor, and:

1. Issue a writ of mandamus, pursuant to Title 28 U.S.C.S. § 1361(b), ordering Respondent, Federal Bureau of Investigation, and the appropriate agents and/or persons acting on their behalf, to perform the duty owed petitioner under Title 28 U.S.C.A. § 535, within fifteen (15) days of the date of the order; or, in the alternative, order the aforementioned respondent to appear before this Court and show cause why should not do so;
2. Order Respondents, Federal Bureau of Investigation and AGENT DOES ONE through TEN, to provide a reasonably sufficient explanation for their past refusal to uphold the provisions of the Title 28 U.S.C.A. § 535, and for their failure to perform their statutory duty, as prescribed therein;
3. Order Respondent, Federal Bureau of Investigation, to provide a

1 responsive answer to this petition; and, prior to any decision for  
2 dismissal, afford Petitioner an evidentiary hearing; or, in the  
3 alternative; and,

4. Order Respondent, Federal Bureau of Investigation, to make known  
5 to Petitioner and this Court, upon forwarding his complaint,  
6 the determination by the Civil Rights Division of the Department  
7 of Justice, and, in particular, "as to whether the Department  
8 will request a criminal civil rights investigation by the FBI  
9 or whether the Division will decline criminal prosecution in  
10 favor of an administrative inquiry," as prescribed by the United  
11 States Attorneys' Manual, Title 7, Civil Rights Resource Manual,  
12 § 42, which describes the method in which the FBI conducts  
13 investigations, and provides the criteria for determining when an  
14 investigation by the FBI is required.

15

16 **VERIFICATION**

17 I, James Alan Bush, petitioner in the above-entitled action, have  
18 read the foregoing and know the contents thereof.

19 I declare under penalty of perjury that the foregoing is true and  
20 correct and that this declaration was executed in San Jose, California.

21 Petitioner: 

22 Dated: 6-11-08